

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LARRY MOTTON,

Plaintiff,

v.

MR. LEE, et al.,

Defendants.

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CIVIL ACTION

NO. 01- 4273

MEMORANDUM

ROBERT F. KELLY, Sr. J.

JANUARY 10, 2002

On August 22, 2001, Plaintiff Larry Motton, a state prisoner, filed a *pro se* 42 U.S.C. § 1983 civil rights Complaint against S.C.I. Graterford Unit Manager Mr. Lee, Unit Manager Ed Dennis, Superintendent Donald Vaughn, Counselor Chuck Bobb and the Commissioner of the Pennsylvania Department of Corrections Martin Horn.¹ On September 25, 2001, pursuant to 28 U.S.C. § 1915(e), this Court dismissed Plaintiff's Complaint as frivolous, however giving leave to the Plaintiff to file an Amended Complaint. Plaintiff filed an Amended Complaint on October 1, 2001. Then, on November 29, 2001, this Court ordered Plaintiff to file a More Definite Statement, specifically ordering Plaintiff to detail his claim for relief against each Defendant. Presently before this Court is Defendants' Motion to Dismiss the Complaint pursuant to FED. R. CIV. P. 12(b)(6).

This Court acknowledges that Plaintiff, as a *pro se* litigant, is entitled to

¹ By order dated October 9, 2001, Property Room Supervisor Sgt. Cox was dismissed from this case as well as Plaintiff's claim for loss of property.

some latitude. Bieros v. Nicola, 839 F.Supp. 332, 334 (E.D. Pa. 1993). In this case, Plaintiff has had three chances in which to properly plead his case. Moreover, this Court's Memorandum Opinion dated September 25, 2001, in which Plaintiff's first Complaint was dismissed, specifically instructed the Plaintiff on how to cure his defective Complaint. However, both the Amended Complaint and More Definite Statement are extremely difficult to decipher and neither document contains a "short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a). Further, separate claims are not stated in separate counts and it is unclear what factual foundation, if any, exists for the various claims asserted. In Nietzke v. Williams, 490 U.S. 319 (1989), the Supreme Court in construing the meaning of "frivolous" under 28 U.S.C. § 1915(d) held that "a complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." Id. at 325. Pursuant to this standard, the Amended Complaint and More Definite Statement as written states no facts to support claims that conceivably would constitute a specific violation of Plaintiff's constitutional rights. See Braverman v. Lachman, No. 91-1704, 1991 WL 61122, *1-2 (E.D. Pa. Apr. 16, 1991)(complaint without factual allegations dismissed as frivolous). Accordingly, the Amended Complaint must be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i).

An appropriate Order follows.

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ORDER

AND NOW, this 10th day of January, 2002, upon consideration of Defendants' Motion to Dismiss (Dkt. No. 17) and Plaintiff's Response thereto (Dkt. No. 18), it is hereby ORDERED that the Motion is GRANTED and Plaintiff's Complaint is DISMISSED with prejudice.

BY THE COURT:

Robert F. Kelly,

Sr. J.